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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: FEB 26 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud and willful misrepresentation of a material fact on March 10, 1986. On February 11, 1997 in India he married a lawful permanent resident and he is the beneficiary of an approved Petition for Alien Relative. His wife naturalized and is now a citizen of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with his U.S. citizen spouse.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Officer in Charge Decision* dated June 25, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects and the applicant admitted, that on November 18, 1998, the applicant knowingly and willfully misrepresented material facts by presenting fraudulent documents in order to procure a nonimmigrant visa.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the

determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that the Immigration and Naturalization Service (now, Citizen and Immigration Services, CIS) failed to correctly assess extreme hardship to the applicant's spouse [redacted] Counsel states the[redacted] would suffer extreme hardship in the United States due to her medical condition, or if she was forced to leave the United States in order to relocate with her spouse in India if her spouse's application for a waiver was not approved. In support of this assertion, counsel submitted a brief, a psychological evaluation, affidavits from family members, from [redacted] work and financial documentation. The affidavits state general hardship that would be imposed on Ms. Patel if her spouse were not allowed to enter the United States. In the brief it is stated that [redacted] may be forced to leave the United States and relocate to India if her husband's application was denied. In addition it is stated that the lack of adequate educational opportunities and insufficient medical facilities in India would impose extreme hardship to [redacted] Counsel states that [redacted] has financial obligations such as a mortgage, and the need to provide shelter and other living expenses to her elderly parents. Counsel asserts that [redacted] might not find sufficient work in India. In the present case the record reflects that [redacted] is a native of India and that she met and married her husband in India. She is bilingual and no reason was provided, other than general country conditions, as to why she would not be able to adjust to life in India and obtain gainful employment if she decides to relocate to India.

There are no laws that require [redacted] to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

A psychological evaluation was submitted which states that [redacted] suffers from post traumatic stress disorder (PTSD) and depression. The psychological evaluation notes that [redacted] symptoms were excessive guilt feelings, impaired memory and concentration, feeling of hopelessness, insomnia and nightmares.

The July 8, 2002 psychological evaluation recommends that [redacted] be seen for regular, individual psychotherapy sessions on an ongoing basis, that she receive a psychiatric evaluation to assess the need for

medication and that she attend a support group with other women who are experiencing similar emotional problems. The psychologist's evaluation does not mention if her condition can be treated in India if she decides to relocate. Nor is there any indication that Ms. Patel followed the recommendation.

In the brief submitted by counsel is it stated that the applicant's parents-in-law would suffer if the applicant was not permitted to enter the United States.

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident parent-in-law. Counsel's assertions regarding the hardship the applicant's parents-in-law would suffer will thus not be considered.

Additionally, on appeal the applicant submitted a letter from [redacted] in which it is stated that the applicant: "....has been in depression due to immigration USA visa and marriage life. [redacted] thinking about suicide. Pain and agony to patient due to USA visa system." Furthermore, counsel states that the applicant is suffering from weight loss, excessive worrying and crying in addition to feelings of guilt. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

The assertion of financial hardship to the applicant's spouse is contradicted by the fact that, pursuant to § 213A of the Act, 8 U.S.C. § 1183a, and the regulations at 8 C.F.R. § 213a, the person who files an application for an immigration visa or for adjustment of status on or after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable on behalf of a beneficiary (the applicant) who is an immediate relative or a family-sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support on behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

No evidence has been provided to substantiate that her husband's financial contribution is critical to her lifestyle or well-being.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not allowed to travel to United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.